UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTEEN

CRUNCH FITNESS
Employer
and Case 13-RC-21466

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 399 Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 10 and March 20, 2006, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.[1]

I. ISSUES

This petition raises the following issue: whether the petitioned-for multi-facility unit of six maintenance technicians at five Crunch Fitness health clubs in Chicago is an appropriate unit for purposes of collective bargaining. The Employer contends that only single facility units are appropriate. The Petitioner contends that a multi-facility unit consisting of the Employer's Chicago facilities is appropriate.

II. DECISION

For the reasons discussed in detail below, I hereby direct an election to be held encompassing the following unit which I find to be an appropriate unit for collective bargaining:

All full-time and regular part-time maintenance technicians/ mechanics employed by AGT Crunch Acquisition LLC d/b/a Crunch

[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organization involved claim to represent certain employees of the Employers.

d. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Fitness at its five Chicago facilities located at: 2727 North Lincoln, Chicago, Illinois, 60614; 820 North Orleans, Chicago, Illinois, 60610; 350 North State, Chicago, Illinois, 60610; 38 East Grand, Chicago, Illinois, 60611; and 939 West North, Chicago, Illinois, 60622; but excluding all office clerical employees, guards, professional employees and supervisors as defined by the Act.

III. STATEMENT OF FACTS

AGT Crunch Acquisition LLC d/b/a Crunch Fitness (hereafter "Crunch" or the "Employer") recently began operating as an independent entity after being spun-off from Bally Total Fitness on January 21, 2006. Crunch operates 32 health clubs nationwide. Five of the health clubs operated by Crunch are located in Chicago, all on the north side of the city and are commonly known by their geographical location in the city as Lincoln Park, North and Sheffield, Orleans, Grand Avenue, and Marina City. The farthest distance between Crunch's Chicago clubs is four to five miles, while some clubs are located within a mile of each other.

A. Club Facilities:

Each of the five Chicago clubs varies to some degree in terms of the size and amenities. For example, the North and Sheffield location contains a pool, is 50,000 square feet in size and encompasses three levels. The other four Chicago clubs do not have a pool. By comparison, the Lincoln Park location has 10,000 square feet of space and is a single level. The North and Sheffield and Marina City have steam rooms which the other three Chicago clubs do not have. At the Orleans location there is a laundry service on site which requires the mechanics to perform maintenance for the dryer and washer. All other sites contract out the laundry services.

However, in basic terms, all locations contain the typical fitness machines (stationary bicycle, treadmills, weight machines, etc.) Some of the facilities have older equipment than others, resulting in some differences in terms of the frequency of repairs. (Newer equipment usually requires less maintenance and/or is under warranty so service can be done by the outside vendor.) For example, Lincoln Park has older equipment, none of which is under warranty, while the North and Sheffield location opened two years ago and received all new equipment.

B. Supervision

Following the Crunch's "spin-off" from Bally in January 2006, changes were made in the Crunch's operating structure that affected the mechanics. Prior to the "spin-off", there was a "mechanics department" with its own supervision that encompassed the mechanics sought in the instant petition. After the "spin-off" daily supervision of all the employees in each club, including the mechanics was centered in each club's general manager. The general managers in turn report to the Area Vice President. Each general manager has responsibility over hiring, firing, discipline, and scheduling issues. Given the short time that Crunch has operated independently, procedures and policies were still being developed at the time of the hearing and the extent of the Area Vice President's oversight of the general managers' supervisory functions has not been clearly developed.

With regard to the mechanics, the record as a whole reflects that the general managers exercise little oversight of the mechanics' work. The mechanics' work schedules generally start before the clubs open and they may complete a substantial portion of their shifts prior to the

general manager coming on duty. The mechanics perform their maintenance tasks independently with little oversight other than a general manager occasionally pointing out a repair that needs to be made. At the time of the hearing the mechanics were working at the same facility, engaging in the same maintenance tasks, and following preventive maintenance schedules that they did when the clubs had been under Bally.

C. Wages, Hours and Working Conditions

At the time Crunch was spun-off from Bally, the six mechanics were "hired" by Crunch at the same positions, clubs and rate of pay that they held at Bally. They are paid hourly and earn between $12.84 and $17.44 an hour, depending on their individual level of experience. They each receive the same benefits package. The start and end times of the mechanics shifts vary among the different clubs. For example, two mechanics begin at 4:30 a.m. while one starts at 7 a.m. Due to the independent nature of their work, breaks and lunch hours also vary throughout the day. In terms of uniforms, there is no set dress code—some mechanics wear a tshirt with the company logo, others have a standard mechanic's shirt, and a third group does not utilize uniforms. Some mechanics provide their own tools while others do not.

D. Skills and Common Functions

No specific training or certifications required for the mechanics jobs but some of the mechanics came to the job with specialized skills acquired in the military, for example. Three mechanics have are certified by the State of Illinois for pool maintenance. One mechanic has a certification in HVAC (heating, ventilation, and air conditioning).

Much of the day to day job duties at all five Chicago clubs is the same or similar and include repairing fitness equipment and weight machines, performing minor electrical and plumbing work, and generally servicing the facility's infrastructure such as the boiler and lighting systems. Mechanics also inspect the facility daily to determine if any equipment needs repair and maintain a preventative maintenance schedule.

There are some differences in job duties due to equipment differences between the clubs. Thus, the North and Sheffield club requires pool maintenance by one of the two mechanics there which is not required at the other clubs. Similarly, the steam rooms North and Sheffield and Marina City and the laundry equipment at Orleans require maintenance duties that are not performed at the other clubs.

D. Contact and Interchange

With the exception of the North and Sheffield club each Chicago club has one mechanic who is responsible for the maintenance functions for that particular club. At the North and Sheffield club there are two mechanics. Therefore, on a regular basis, mechanics work alone in performing their routine maintenance functions. However, the record shows that some tasks require more than one mechanic to perform, and in some instances a mechanic at one club will seek the advice and assistance of a mechanic from another facility that may have more experience or expertise in performing certain functions. The record reflects a number of instances since Crunch was "spun-off" from Bally where mechanics from one or more clubs have assisted mechanics at other clubs to perform tasks such as moving a boxing ring, repairing

boilers at two facilities, fixing spin bikes, and changing the belts on treadmill machines on three or more occasions. The mechanics will also interact with each other to obtain supplies and parts for the machines when one club is out of an item that another club has in stock. The need for a mechanic to pick up supplies from another club appears to have been more frequent in the beginning of Crunch's transition to an independent operation as a system for obtaining supplies and materials was not in place. The mechanics also communicate with one another over the phone if a specialized repair issue arises and they are unclear as to how to handle it.

F. Centralized Control of Labor Relations

Currently, there is no employee handbook and a few centralized policies at this time. Payroll is processed through the Crunch Fitness corporate headquarters. Vacation and holiday policies are set at the corporate headquarters. There is a uniform health insurance for all employees. All Crunch employees are subject to a uniform anti-sexual harassment policy. Mechanics, like all other Crunch employees, are subject to the same ethics code that governs the entire workforce at Crunch.

IV. DISCUSSION

A. Appropriateness of the Unit

There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be "appropriate" so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Brand Precision Services,* 313 NLRB 657 (1994); *Phoenix Resort Corp.,* 308 NLRB 826 (1992). Moreover, the Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate[2], then the inquiry into the appropriate unit ends. *Boeing Co.,* 337 NLRB 152 (2001). Thus, the issue herein is whether the multi-facility unit of six mechanics working in the Employers' five Chicago clubs is an appropriate unit. The Employer contends the mechanics do not share a community of interest with each other and the petitioned-for multi-facility unit is therefore inappropriate[3]. The Employer's position is based on differences between the mechanics and from the fact that they work at different facilities.

While the Board usually presumes that a single-site unit is appropriate, when a union petitions for a multi-facility unit, that presumption becomes inapplicable. *NLRB v. Carson Cable TV,* 795 F. 2d 879 (9th Cir. 1986). In a multi-facility unit, consideration is given as to whether employees could separately organize at their individual sites. *Cities Service Oil Co.,* 200 NLRB 470 (1972). The inability of employees to exercise their Section 7 rights to organize at their individual sites weighs in favor of a multi-unit determination. *Id.*

[2] A unit is appropriate where employees in the unit have a separate community of interest from other job classifications; in determining this community of interest, the Board examines such factors as wages, hours and working conditions, commonality of supervision, degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. *Armco, Inc.,* 271 NLRB 350 (1984); *Atlanta Hilton & Towers,* 273 NLRB 87, 89 (1984); *J.C.Penney Co.,* 328 NLRB 766 (1999). [3] The Employer in its brief acknowledges that the two mechanics that work at the North and Sheffield club have a community of interest to constitute an appropriate unit.

Contrary to the Employer, I find that the six mechanics at the Employer's five Chicago clubs have a sufficient community of interest to constitute an appropriate. The mechanics in these five clubs have a community of interest vis-à-vis each other simply from the fact that they work for the same Employer. In addition they engage in similar work tasks; they work in facilities that are in close proximity and which constitute a coherent geographical grouping; they have regular interchange and contact in the course of their work; and they are subject to a number of common policies and conditions of employment regarding such matters as uniform ethics standards, an anti-sexual harassment policy, sick leave, vacation time, and health insurance.

I do not find that the internal differences between the various mechanics at the five Chicago clubs to negate the appropriateness of the multi-facility unit sought by the Petitioner. The separate supervision that exists in the general manager of each club, which the Employer emphasizes, does not make the multifacility unit inappropriate, as the impact of that supervision on the mechanics is insignificant inasmuch as the mechanics operate work independently with very little oversight by the general managers. Further, while separate supervision is a factor in determining the appropriateness of single facility units, it is much less of a factor in considering the appropriateness of multi-facility units given that there will almost invariably be some degree of separate supervision in multi-facility unit situations. *Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950). What is more important in considering the appropriateness of a multi-facility unit is whether there is a level of supervision or management that is coherent with multi-facility unit being sought. Here, the Area Vice President, Jeff Riney, has management responsibility for the five clubs sought by the Petitioner in a multi-facility unit.

While the Employer views the facilities as being so geographically separate to negate a community of interest among employees for a multi-facility unit, I reach the opposition conclusion. As set forth above, it is the opinion of the undersigned that a grouping of five facilities on the north side of Chicago with a maximum separation of five miles[4] and a minimum of a few blocks constitute a close and coherent geographical grouping of the facilities to constitute an appropriate multi-facility unit. It is further the opinion of the undersigned that differences in wage rates, skills, and other minor matters such as the wearing of uniforms are do not negate the community of interest shared by the mechanics in the Employer's Chicago clubs.

In addition to finding that the mechanics at the five Chicago clubs have a sufficient community of interest to constitute an appropriate multi-facility unit, I note that single-location unit position taken here by the Employer would result in 4 out of 6 employees being denied organizational rights because it is "contrary to the settled policy of the Board to certify a representative for bargaining purposes in a unit consisting of one employee." *Sonoma-Marin Publishing Co.*, 172 NLRB 625 (1968); *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977). The inability of the mechanics to exercise their Section 7 rights to organize together on single facility basis is a factor that weighs in favor of the multi-facility unit given the unit issue raised herein.

[4] The five mile figure is based on testimony and may be overstated. As pointed out by Petitioner in its brief, www.Mapquest.com, places the distance as slightly under four miles. However, whether the distance is five miles or four miles, in the view of the undersigned, the distance is still close proximity.

C. Conclusion

Based on the foregoing and the entire record I have found that the six mechanics located at the facilities Lincoln Park, North and Sheffield, Orleans, Grand Avenue, and Marina City constitute a unit appropriate for purposes of collective bargaining.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition in any economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikes who have been permanently replaced as well as their replacements are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and the employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 399 or no labor organization.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the nonposting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services,* 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names

and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of the issuance of this decision. *North Macon Health Care Facility,* 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 900, 209 S. LaSalle Street, Chicago, Illinois, 60604 on or before **Friday, April 14, 2006.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street. N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 21, 2006.

DATED at Chicago, Illinois this 7th day of April 2006.

Roberto G. Chavarry
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